



South Florida Water Management District

MINUTES GOVERNING BOARD WORKSHOP

October 13, 2010

1:00 PM

District Headquarters - B-1 Auditorium

3301 Gun Club Road

West Palm Beach, FL 33406

Members Present:

Sandy Batchelor

Charles Dauray

Kevin Powers

Eric Buermann, Chair

Shannon Estenoz

Glenn Waldman

Joe Collins

Jerry Montgomery

1. Call to Order - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 1:09 p.m.

2. Pledge of Allegiance - Eric Buermann, Chairman, Governing Board

Glenn Waldman led the group in the Pledge of Allegiance.

3. Approval of Minutes for following meetings all held in West Palm Beach, Florida:

- July 23, 2010, Special Meeting- Attorney Client Session,

- September 8, 2010, Workshop,

- September 9, 2010, Regular Business,

- September 21, 2010, Public Hearing on FY2010-11 Final Millage and Final Budget, and

- October 1, 2010, Special Meeting - Attorney Client Session

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 3

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Glenn Waldman.

Motion passed.

4. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services

There were no changes to the agenda.

5. Abstentions by Board Members from items on the Workshop Agenda

There were no abstentions by Board members.

Ms. Estenoz announced her disclosure on Agenda Item 8. She will not participate in discussions regarding Florida, Power and Light (FPL) if they arise with item 8 as her husband is involved with legal proceedings with FPL.

6. Pull Items for Discussion from Consent Agenda

There were no items pulled for discussion from the Consent Agenda.

7. A Review of Lead Ammunition Use For Hunting on District Lands - Robb Startzman, Lead Scientist, Land Stewardship Division and Dr. Coyner, Public Hunting Areas Section Leader, Florida Fish and Wildlife Conservation Commission. (ext. 6552)

Steve Coughlin, Director, Land Stewardship Division, presented background information regarding using lead shot for hunting on District land.

Robb Startzman, Lead Scientist, Land Stewardship Division, presented information on lead in the environment. He provided data and information about studies conducted to investigate potential soil, surface and groundwater contamination at shooting ranges. He reported on the District hunting opportunities on public land (more than 687,000 acres) and the assessment of environmental impacts on the land. Mr. Startzman also reported on the hunting activities in the Holeyland Wildlife Management area which has been hunted for over 40 years. There are no signs of elevated lead levels and no exceedances of water quality standards or sediment values. Based on soil types, low hunting intensity and low lead deposition, current data suggests there are no environmental impacts associated with the current hunting programs being administered on lands titled to the District.

Dr. Coyner, Public Hunting Areas Section Leader, Florida Fish and Wildlife Conservation Commission (FWC), presented information on the statutory responsibility of FWC which has the regulatory authority for fish and wildlife which includes hunting, fishing and methods of take. Dr. Coyner also reported on the USFWS Migratory Bird Treaty Act and the federal responsibility for migratory bird regulations and noted FWC works very closely with FWS to adopt rules within federal frameworks.

Dr. Coyner reported ingestion of lead shot and sinkers are known to be toxic to birds (esp. waterfowl):

- Scientists, policy makers and stakeholders began discussions to limit lead in waterfowl habitat in the 1970's.
- Phased in approach over many years.
- Issue was contentious.
- USA (1991) - A nationwide ban on lead shot for taking waterfowl and coots.
- All vertebrate species are susceptible to poisoning by ingestion of lead.
- The amount of lead available for ingestion and feeding behavior of the species is critical.
- Much research has been done but science is still incomplete. Dr. Coyner reported on how FWC is engaged in this issue and what other states are doing. He said lead poisoning can impact wildlife, but population level effects are not clear. All current FWS restrictions on lead shot are being followed in Florida. FWC is engaged with partners and stakeholders on this issue and has constitutional authority for wildlife management and hunting methods.

Mr. Startzman concluded the review for lead shot hunting on District land:

- No evidence to suggest environmental impacts associated with hunting activities.
- Hunting activities are compatible with the purposes for which the lands were acquired.
- In the absence of any environment impacts, the District does not have the authority to regulate the use of lead ammunition, which is FWC's statutory responsibility.
- District maintains a successful partnership with FWC in managing hunting activities on District lands.

In summary, Mr. Startzman noted FWC works closely with USFWS and the District on lead shot and will proceed with regulatory changes if deemed necessary on a statewide basis inclusive of all public and privately owned lands.

Mr. Dauray noted concerns from the Izaak Walton League of America regarding residue from lead shot at target shooting range clubs and said it can be substantial.

Mr. Montgomery asked how do we address the issue of open hunting on dry land and then the possibility of the land being submerged in the future.

Mr. Startzman explained the soil remediation process during construction of water resource projects.

Dr. Coyner commented on shooting ranges and accumulation of lead shot and said lead shot is not used at STAs.

Mr. Collins thanked staff and FWC for an informative presentation and said the facts of lead shot seem to show this is not an issue and he supports using land for public purposes.

Commenting on the legal authority, Ms. Estenoz explained that activities have to be compatible with designated uses of public lands. Hunting has been determined to be compatible on certain public lands the District owns and, therefore, the District cannot ban that use.

Public Comment: Rosa Durando, Audubon Society, commented on heavy metals in the soil and said there is too little known about heavy metals in sandy soil.

Public Comment: Newton Cook, United Waterfowlers, supports lead shot and said it is very rare to find lead shot on public lands.

Public Comment: Milan Balkanski, United Waterfowlers, said the science is still not there and cautioned to be careful.

Public Comment: Jane Graham, Audubon of Florida, said lead poisoning of birds is a great concern for Audubon and recommends that FWC continues to research whether bird hunting should be with non-toxic shot.

Public Comment: Todd Hallman, Florida Sportsman Conservation Association, said lead shot is not an issue. He thanked the Board for their discussion.

Public Comment: David Lithgow, United Waterfowlers of Florida, said there is not a lot of shooting on District land but this issue is not going away. To change shot, however, is a nationwide process.

Public Comment: Byron Maharrey, Everglades Coordinating Council, said he doesn't feel there is a concern on lead shot. He thanked the Board for recreational uses on public land.

Public Comment: Bill Rayside, Ducks Unlimited and United Waterfowlers, supports lead shot.

8. Overview of South Dade Seasonal Operations and Protocols - Matt Morrison, Director, Project Coordination Division, Everglades Restoration and Capital Projects (ext. 3718)

Chair Buermann noted that he has received a lot of communication from the Miami Dade farmers and the environmental groups. Because of this, he requested this item be added in order to get an update on the agricultural drawdown.

Matt Morrison, Director, Project Coordination Division, presented an overview of the seasonal operations, when they began, and when and where do seasonal operations occur.

Chair Buermann said the issue is possibly modifying the agricultural drawdown so it is more environmentally friendly to Biscayne Bay.

Mr. Morrison reported on the S-21A structure and the lowering of the canals due to heavy rainfall and crop protection.

Ms. Estenoz questioned the lowering of these canals and what was best for Biscayne Bay.

Mark Lewis, Superintendent, Biscayne National Park, reported on the historical flow into Biscayne Bay and said he would like to see the ability to maintain more of the water that is currently being flushed out and use that water as we enter the dry season.

Mr. Morrison then reported on the 2009/2010 findings and the new Biscayne Bay Coastal Wetlands (BBCW) expedited L-31E culverts. The L-31E Plug south of Florida City Canal and Card Sound Road Canal structure are operational plus the permit has been issued for the Card Sound Road plug. He said there is communication between National Park Service, farmers, environmental community and District Operations staff to monitor conditions and structure operations.

Mr. Morrison also reported on the Regional Statistical Analyses being done by Virginia Tech for the purpose of identifying temporal and spatial correlations to better understand the relationship between surface, groundwater and salinity levels.

Public Comment: John Alger, Alger Farms, said the drawdown process has been happening for over 90 years. He said the farmers take care of their fields and work well with Field Station staff.

Public Comment: Lee Hefty, Miami Dade County DERM, thanked District staff working together with his staff on this issue.

Public Comment: Mark Lewis, Superintendent, Biscayne National Park, thanked staff for working on an issue that affects south Dade county. He said working with staff has been very productive.

Public Comment: Lara Reynolds, Tropical Audubon Society, provided a handout to the Board and addressed environmental concerns with the drawdown. In addition, Ms. Reynolds questioned if an Environmental Impact Statement (EIS) under NEPA is required.

Kim Taplin, USACE, provided additional information pertaining to the systems operations manual and National Environmental Policy Act (NEPA).

Ms. Estenoz clarified the process: As long as the optimizing process happens within the bounds of the lower and upper portions of the operating manual, then it doesn't trigger the NEPA process. It is when you go outside the boundaries that a new NEPA process is required.

Ms. Taplin confirmed that if you are making significant changes from the authorizing document, then it would trigger a NEPA process.

There was further Board discussion on the annual review process. Mr. Ammon said staff will continue to do a statistical analysis to obtain more environmental information.

Public Comment: Megan Tinsley, Audubon of Florida, suggested there be a notification system in place to inform the National Park Service and other stakeholders when changes to the structures in the drawdown area are raised or lowered in order for the National Park Service to collect data.

Chair Buermann requested an update on this item at the December meeting.

9. Everglades Restoration Transition Plan (ERTP), Phase 1 Update - Susan L. Connor, Chief, South Florida Section, Environmental Branch, Planning Division, and Donna S. George, P.E., Sr. Project Manager, Project Execution Branch, Everglades Division, U.S. Army Corps of Engineers

Susan Connor, USACE, provided an update on the Everglades Restoration Transition Plan - Phase 1. She reported on the ERTTP objectives and process, the FWS multi-species transition strategy, and on the SFWMM model run results for the Snail Kite, Wood Stork and Tree Islands.

Dan Crawford, USACE, provided an assessment of water supply performance that was in the evaluation.

Ms. Connor reported a water quality analysis has been conducted on all the alternatives but noted water quality was not part of the plan formulation nor was it used to choose the selected plan. She noted the ERTTP water quality information has been made available to the Technical Oversight Committee and will be discussed at their meeting on October 19, 2010.

Ms. Wehle stated concern with water quality issues with projects especially Tamiami Trail. There is concern that projects will "trip" water quality numbers under the Consent Decree and this concern should be brought to the Special Master.

Ms. Taplin from the USACE said water quality is important to the USACE but said they are not required to use that as part of their plan selection.

Mr. Montgomery said from a fiduciary standpoint, the Board's responsibility is to protect the taxpayers of this District from unintended consequences of the decisions that the Board doesn't control. He said there needs to be frank discussions about the water quality issues because these decisions have implications that could be very costly.

Ms. Wehle commented on tripping the numbers in Everglades National Park and said the District is complying with the Federal Clean Water Act. Staff wanted to raise the concern for the Board that federal actions may cause the District to be in violation of the Consent Decree. This problem should not be ignored due to the serious financial impact to the citizens of the State of Florida. Ms. Wehle discussed a waiver or acknowledgment from a federal court that if the violation occurs that the District will not be held responsible.

Ms. Estenoz supports notifying the courts about this issue.

There was further Board discussion about communicating with parties involved in the Consent Decree and working through the issues together.

Public Comment: Meagan Tinsley, Audubon, commented about the decreased Snail Kite population and the need for the restoration projects being completed.

Both Mr. Collins and Mr. Powers support being proactive on staff's concerns and solution to this problem.

10. **Update on Climate Change and Water Management in South Florida.** - Jayantha Obeysekera, Director, Hydrologic & Environmental Systems Modeling Department, and Kim Shugar, Director, Intergovernmental Programs Department (ext. 6016 and 6503)

This item was postponed.

11. **Overview of the Broward County Water Resource Taskforce Report** - Dean Powell, Deputy Director, Intergovernmental Programs Department (ext. 6787)

Dean Powell, Deputy Director, Intergovernmental Programs Department, presented an overview of the Broward County Water Resource Taskforce report. The approval of the report is on the Consent Agenda for the October 14, 2010, meeting.

Ms. Estenoz said the Task Force has made a lot of progress and commented on the C-51 project as a water supply and water quality project. She requested this agency work through an analysis of these projects.

Ms. Wehle supports this evaluation and reported all stakeholders will be involved in the analysis process.

Public Comment: Rosa Durando, Audubon Society, commented on the seepage problems and funding issues in Palm Beach County.

Public Comment: Martha Musgrove, Arthur Marshall Foundation, said there are a lot of issues needing to be elevated and discussed and cautioned water flowing through Arthur R. Marshall Loxahatchee National Wildlife Refuge and they will not support this.

12. Public Comment

There was no public comment.

13. ATTORNEY CLIENT SESSIONS

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in New Hope Sugar Co., et al. v. South Florida Water Management District, Florida Third District Court of Appeal, Case No. 3D09-2357 and South Florida Water Management District v. Miccosukee Tribe of Indians of Florida, et al., Supreme Court of Florida, Case No. SC09-1893.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, F. Bartolone, K. Burns, J. Nutt.

Action Items (if any) Stemming from Attorney client session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in New Hope Sugar Co., et al. v. South Florida Water Management District, Florida Third District Court of Appeal, Case No. 3D09-2357 and South Florida Water Management District v. Miccosukee Tribe of Indians of Florida, et al., Supreme Court of Florida, Case No. SC09-1893. (Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

14. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Friends of the Everglades, Inc. and Fishermen Against Destruction of the Environment, Inc. v. South Florida Water Management District, et al., United States Court of Appeals, Eleventh Circuit, Case No. 07-13829-HH; Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 98-6056-CIV-Lenard/Klein; and Friends of the Everglades v. South Florida Water Management District, United States District Court, Southern District of Florida, Case No. 98-6057-CIV-Lenard/Klein.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, F. Bartolone.

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Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Friends of the Everglades, Inc. and Fishermen Against Destruction of the Environment, Inc. v. South Florida Water Management District, et al., United States Court of Appeals, Eleventh Circuit, Case No. 07-13829-HH; Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 98-6056-CIV-Lenard/Klein; and Friends of the Everglades v. South Florida Water Management District, United States District Court, Southern District of Florida, Case No. 98-6057-CIV-Lenard/Klein. (Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

15. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt, F. Bartolone, and outside counsel D. Moore.

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

- 16.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Miccosukee Tribe of Indians of Florida, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1817, and New Hope Sugar Company, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1818.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, F. Bartolone, K. Burns, J. Nutt, F. Bartolone.

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Miccosukee Tribe of Indians of Florida, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1817, and New Hope Sugar Company, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1818. (Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

17. Adjourn

Chair Buermann adjourned the meeting at 5:03 p.m.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to adjourn the meeting. Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Joe Collins, Kevin Powers, Eric Buermann, Charles Dauray, Sandy Batchelor and Glenn Waldman. Motion passed.

Eric Buermann
Governing Board Chairman
South Florida Water Management District Governing Board

Recorded By:

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
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